IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 391 OF 2006

IN

CRIMINAL APPEAL NO. 24 OF 2006

SANDRA FERNANDES ....Applicant

Versus

STATE REP.BY PUBLIC PROSECUTOR ....Respondent

Mr. Vivek Rodrigues, Advocate for the Applicant.
Ms. W. Coutinho, Public Prosecutor for the State-Respondent - absent.

Coram:- P.V. KAKADE, J.

Date:- 21st December, 2006

P.C.:

Heard Advocate for the Applicant. None appears for the State, though duly served.

This is an application for discharge of surety and release of money. It is submitted that the original appellant preferred an appeal against the judgment and order of conviction under Section 304(2) of I.P.C. passed by the Sessions Judge, South Goa in Sessions Case No. 4 of 2003. By order dated 28/04/2006, this Court granted the original plaintiff, suspension of his sentence as well as permission to leave the Country subject to certain conditions. In compliance with the said conditions, the appellant deposited cash surety of Rs. 50,000/- and the applicant also stood surety to the original appellant in the equal amount which was in the form of fixed deposit receipt bearing no. 934846 dated 29/04/2006 of South India Bank Ltd., Margao branch, which was issued in favour of Ms. Sandra Fernandes, which is part of the Court record. It is further

submitted that original appellant Shri Anthony Carvalho expired on 9/09/2006 at Margao. Death certificate of this event is annexed with this application and on that basis applicant has prayed for discharge of surety and consequent release of the amount.

In my considered view, once the appellant is expired, the surety is entitled to be discharged and no obligation can be cast upon the surety with regard to the bond executed by the applicant.

In view of this position, the application is allowed in terms of prayer clause (a), (b) & (c) and stands disposed of.

Prayer Clause -

(a) Discharge the Applicant as a surety for the original Appellant;

(b) Release the Fixed Deposit receipt bearing No. 934846 dated 29.04.2006 issued by South Indian Bank, Margao Branch in favour of the Applicant herein;

(c) Issue directions to the Bank Manager, South Indian Bank, Margao to allow encashment of the Fixed Deposit receipt No. 934846 as and when the Applicant so desires.

P.V. KAKADE, J.

NH